IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 28.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.4 of 2006

Peer Mohammed ... Petitioner

vs.

1. State of Tamilnadu
rep by Secretary to Govt.,
Public (SC) Department,
Fort St. George, Chennai-9.

2. Union of India, rep.
by Secretary to Govt.,
Ministry of Finance, Department
of Revenue, COFEPOSA Unit,
Central Economic Intelligence
Bureau, Janpath Bhavan,
'B' Wing, VI Floor, New Delhi 110 001
Janpath. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records of the 1st respondent made in SR.1/1060-6/2005 dated 23.12.2005, quash the same and set at liberty, direct the respondent to produce detenu Y.Maideen, son of Peer Mohammed, now detained in central Prison, Chennai, under the provision of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act.

For Appellant : Mr.B.Kumar, Senior Counsel
for Mr.R.Loganathan.

For R-1 : Mr.M.Babu Muthu Meeran,
Addl. Government Pleader.

For R-2 : Mr.P.Kumaresan, Addl. Central
Govt. Standing Counsel.

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O R D E R

The petitioner herein challenges the impugned order of detention, dated 23.12.2005, detaining his son by name Maideen under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

2. Heard Mr.B.Kumar, learned Senior Counsel for the petitioner; Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for R-1; and Mr.P.Kumaresan, learned Additional Central Government Standing Counsel for R-3.

3. Mr.B.Kumar, learned Senior Counsel for the petitioner, after taking us through the grounds of detention, materials supplied to the detenu and all other connected papers, has raised the following contentions,

> a. There has been no proper valuation relating to the goods seized from the detenu, therefore, there is non application of mind on the part of the Detaining Authority.
>
> b. Though in the representation sent by the father of the detenu/petitioner, several details/particulars had been furnished to show that the watches alleged to have been seized from the detenu could never be valued more than Rs.20/- piece; the same were not properly considered; hence, the consideration of the representation is vitiated.

4. Learned Additional Public Prosecutor, by placing the relevant records contended that there is no procedural flaw or infirmity in the order of detention and prayed for dismissal of the Petition.

5. We have considered the rival contentions and perused the relevant materials.

6. In view of the materials placed, we shall consider both the above mentioned contentions together.

7. It is seen that on 18.11.2005, the detenu arrived from Hong Kong and declared the contents of his baggage as watches valued at Rs.30,000/-. The goods were inventoried and the value of the same was arrived at Rs.5,43,650/-. It is also seen that on the same day, ie., on 18.11.2005, statement was recorded from the detenu to the effect that he had studied upto VIII Standard and at the instance of one Surjit, he went to Hong Kong and

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brought the goods. On 19.11.2005, the detenu was arrested and remanded.

8. Coming to the claim relating to inflated valuation of watches, it is the claim of the petitioner that the detenu sent a representation dated 05.12.2005 to the Government of India alleging that he was compelled by the Officers to write statements as dictated by them; that the watches brought by him were of plastic strap and can be sold for Rs.10 to 15 and maximum Rs.20/- only, however, the D.R.I. Officers fixed the value as Rs.100 to 150/- for the same with a view to arrest and detain him.

9. Mr.B.Kumar, learned Senior Counsel, has brought to our notice that the Central Government has issued binding directions to the Customs Department throughout the country that, having regard to liberalisation of the economy, no arrest under the Customs Act ought to be made on the ground of suspected evasion of Customs duty unless value of the goods in respect of which the evasion of duty is suspected exceeds Rs.5,00,000/-. It is his claim that the goods brought by the detenu was inflated and over valued to make the arrest. It is also stated that the Detaining Authority unfortunately did not critically examine the method of valuation adopted by the Customs Authorities to value the watches brought by the detenu, though required details have been furnished such as valuation fixed in respect of similar watches brought into India on earlier occasions.

10. It is not in dispute that the father of the detenu, viz., the petitioner herein, submitted an undated representation to the first respondent herein. In the said representation, it is specifically stated that the watches brought in by the detenu have plastic strap and they would be sold in the market between Rs.10 and 15/- per piece and the valuation fixed by the D.R.I. Officers at the rate of Rs.100/- cannot be sustained as there is no basis for the same. In the same representation, the petitioner has also highlighted that in the case of one S.R.K.Rabique Nasar, who brought 1500 similar watches on 23.06.2005, the very same authorities valued at the rate of Rs.20/- per piece and after collection of required fees/penalty, he was allowed to clear the goods without any action being taken against him. It is also stated that, in the case of Iskandhar Nainar, when he brought 1000 similar watches, the same authorities valued the watches at the rate of Rs.50/- per piece and passed necessary orders. By pointing out these instances in the penultimate paragraph of his representation and failure to consider the same, the petitioner prayed for quashing of the detention order.

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11. It is not in dispute that the said representation was considered by the first respondent and reply has been sent on 10.01.2006. As rightly pointed out by the learned Senior Counsel for the petitioner, though specific details have been furnished by stating various instances, absolutely there is no proper consideration at all by the first respondent by calling for report from the officers concerned with regard to the same. In paragraph No.3, the first respondent has merely stated that the valuation was made as per the guidelines of the Customs Department. It is apparent that this is only a blunt statement made by the authority without considering the specific details furnished in the representation.

12. In this regard, Mr.B.Kumar, learned Senior Counsel contended that Courts have taken a view that the Government cannot reject the representation of a detenu in a casual or mechanical manner. He also contended that the Government is expected to dispose of the representation with an unbiased mind. It will be useful to refer the dictum laid down by the Hon'ble Supreme Court in various decisions as to how a representation has to be considered and disposed of,

A. In the case of John Martin vs. State of West Bengal reported in AIR 1975 S.C. 775, a Three Judge Bench of the Hon'ble Supreme Court, while considering the representation of the detenu, has concluded,

> "3. ..... This, however, does not mean that the appropriate Government can reject the representation of the detenu in a casual or mechanical manner. The appropriate Government must bring to bear on the consideration of the representation an unbiased mind. There should be, as pointed out by the Court in Haradhan Saha's case, "a real and proper consideration" of the representation by the appropriate Government. We cannot over-emphasis the need for the closest and most zealous scrutiny of the representation for the purpose of deciding whether the detention of the petitioner is justified."

B. The law laid down in John Martin's case was subsequently followed in the case of A.C. Razia vs. Government of Kerala reported in 2004 SCC (Crl.) 618, which is also a Three Judge Bench decision. While considering the power of the Central Government in considering the representation made by the detenu, Their Lordships have concluded,

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"22. ..... The exercise of the power under Section 11 should not be a mere formality or a farce. Care and vigilance should inform the action of the Government while discharging its supervisory responsibility. As observed in Haradhan Saha case (1974 SCC (Crl.)816) and reiterated in K.M. Abdulla Kunhi case (1991 SCC (Crl.)613, what is required is "real and proper consideration". The following observation in Abdul Karim (1969 (1) SCC 433) are quite opposite in this context.

> "But it is a necessary implication of the language of Article 22(5) that the State Government should consider the representation made by the detenu as soon as it is made, apply its mind to it and, if necessary, take appropriate action. In our opinion, the constitutional right to a proper consideration of the representation by the authority to whom it is made. The right of representation under Article 22 (5) is a valuable constitutional right and is not a mere formality."

23. The same proposition has been highlighted by Rajendra Babu, J. By observing that "there should be full and independent application of mind. "

Even in the dissent judgment, Hon'ble Mr. Justice S.B. Sinha, has accepted the above proposition and concluded,

"50. It is therefore, trite that all facts which are relevant for the purpose of giving relief to the detenu are required to be considered. In that view of the matter, the quality of an order passed by the Central government in terms of Section 11(1)(b) of the Act cannot be different from that of the authority which had passed the order."

13. The above decisions make it clear that considering the representation of detenu is not a mere formality, but the same has to be disposed of with an unbiased mind and closest and most zealous scrutiny for the purpose of deciding whether the detention is justified or not.

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14. It is also useful to refer to the decision rendered by a Division Bench of this Court (to which one of us was a party (P.SATHASIVAM, J.), reported in 2006 (I) MLJ (Cri) 131 (Mohiadeen Sahib, P.M.S. vs. State of Tamil Nadu). In the said decision, while considering disposal of the representation of the detenu, after referring to all the above referred decisions, it was concluded that the representation of the detenu is not a mere formality and the same has to be considered with an unbiased mind. It was also held that when several particulars are furnished, it is but proper on the part of the Government to verify those details from the officers concerned and an order has to be passed after due consideration.

15. We have already pointed out that, in paragraph No.3 of the Reply, dated 10.01.2006, the first respondent has merely stated that the valuation has been adopted by following the guidelines and procedure of the Department. Absolutely there is no reference to the details furnished in the representation particularly orders passed in similar cases. Even in the counter affidavit, it is merely repeated that the guidelines issued by the Department have been followed and absolutely there is no answer to the details furnished in the representation of the petitioner. Though learned Additional Public Prosecutor has submitted that valuation of the goods seized is immaterial for the purpose of passing the detention order, as pointed out earlier and also not in dispute, no arrest ought to be made under the Customs Act on the ground of suspected evasion of customs duty unless value of the goods in respect of which the evasion of duty is suspected exceeds Rs.5,00,000/-. In such circumstances, proper valuation by the authority concerned is paramount, as otherwise, the detenu would be handicapped in giving proper reply in respect of excessive valuation. Learned Additional Public Prosecutor also relied on the Division Bench decision, dated 06.04.2006, in HCP No.1174 of 2005. He very much emphasised that, as per para 15 therein, the valuation cannot be questioned in this Petition. We perused the entire judgment. We have no quarrel for the same. But, in the case on hand, we find that the relevant details though specifically stated, the same were not considered while disposing of the representation. Only on the ground of improper disposal of representation, we are inclined to interfere.

16. It is also brought to our notice by the learned Senior Counsel that the detenu had retracted his earlier statement and though the State Government considered the same, there is no specific reply on that aspect. It is pointed out, in the absence of specific reference to the same, the detention order will be vitiated. The grounds of detention, particularly para xiv, does not show that any specific reply was sent regarding retraction. It is not in dispute that courts have taken a view that the

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Detaining Authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated.

17. In these circumstances, we are satisfied that the petitioner has made out a case and that the impugned order of detention cannot stand, accordingly, the same is quashed. Consequently, the detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. Secretary to Govt., Public (SC) Department,
Fort St. George, Chennai-9.

2. Secretary to Govt., Ministry of Finance, Department
of Revenue, COFEPOSA Unit, Central Economic Intelligence Bureau, Janpath Bhavan,
'B' Wing, VI Floor, Janpath, New Delhi 110 001.

3. The Superintendent, Central Prison, Chennai.

4. The Public Prosecutor, High Court, Madras.

+ one cc to Mr. B. Kumaresan, Central Government Standing Counsel sr no. 27680

+ one cc to Mr. R. Loganathan, Advocate sr no. 27358

NA(CO)
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